



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

September 11, 2012

The Honorable Orrin G. Hatch  
United States Senate  
Washington, D.C. 20510

Dear Senator Hatch:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

**Question 1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?**

The applicable regulations are authorized by Section 7805 of the Internal Revenue Code, which provides general authority to prescribe all needed regulations for the enforcement of tax rules. Section 1.501(a)-1(a)(3) of the regulations provides that organizations requesting recognition of tax-exempt status must file the form prescribed by the IRS and include the information required. In addition, section 1.501(a)-1(b)(2) provides that the IRS may require additional information deemed necessary for a proper determination of whether a particular organization is tax-exempt.

**Question 2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011 describe.**

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

To qualify for exemption as a social welfare organization described in section 501(c)(4), the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual.<sup>1</sup>

As discussed in more detail in my April 26, 2012 letter to you, in order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 asks applicants to provide detailed information regarding all of its activities-- past, present, and planned, including the purpose of each activity and how it furthers the organization's exempt purpose, when the activity is initiated, and where and by whom the activity will be conducted. If the Form 1024 questions are answered with sufficient detail to make a determination, the applicant will not be asked further questions. If, however, the detail provided is insufficient to make a determination or issues are raised by the application, then the IRS contacts the organization and solicits information to evaluate whether the applicant meets the requirements for tax exemption in the Code and regulations. There may be cases in which donor information would be relevant to determining if the legal requirements for exemption are satisfied.

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not track the specific questions asked in the requests. Consequently, in order to determine the specific questions asked in those development letters, manual review of each file would be required. IRS staff is available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

**Question 3. Is the Exempt Organizations technical office involved in all such information requests of exemption applications?**

As noted in my April 26, 2012 letter, generally applications for tax-exemption that need further development are assigned to revenue agents in the Exempt Organizations (EO) Determinations office in Cincinnati, Ohio, rather than staff in the EO Technical office. Based on established precedent and the facts and circumstances of the case, an EO Determinations revenue agent will request the information and documentation he/she believes is needed to complete the administrative record and make a determination in the case. As needed, a revenue agent might seek advice from EO Technical staff regarding a particular matter or a case may be referred to EO Technical staff, but the EO Technical office is not involved in all information requests sent to applicants seeking tax-exemption. Note that in situations where there are a number of cases involving similar issues, the IRS may assign cases to designated employees to promote quality and consistency. In such cases, agents, either with or without EO Technical, may work together in drafting information requests for similar cases.

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<sup>1</sup> IRC § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1.

**Question 4. Section 7.21.5 of the Internal Revenue Manual states that Letter 1313 should be used as a first request for additional information for cases received on Form 1024, and that Letter 2382 should be used for second and subsequent requests for information. We have attached redacted copies of an IRS 1313 Letter and 2382 Letter which were reportedly sent to applicant organizations earlier this year. Each of those letters contains passages which specifically request names of donors.**

**a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?**

By law, the IRS cannot comment with respect to letters sent to specific taxpayers. However, we can discuss our general process. Pursuant to Section 7.20.2.4 of the Internal Revenue Manual (IRM), revenue agents in the EO Determinations office assigned to a case are responsible for contacting the organization to obtain any additional information or amendments necessary to process the application. Pursuant to the IRM, questions asked to organizations seeking tax-exemption under section 501(c)(4), would be drafted by the revenue agent working the case. As noted above, in situations where there are a number of cases involving similar issues, the IRS may assign cases to designated employees to promote consistency. In such cases, agents may work together in drafting questions for similar cases.

**b) Which IRS officials provided authority and approval for the questions requesting donor names?**

See response to a), above.

**c) Did any IRS personnel definitively review and determine whether there would be any privacy impact by the requests for names of donors which could ultimately be made part of a publically available administrative record? Was the IRS Office of Privacy consulted, and did it play a role in any such determination?**

The IRS takes privacy very seriously, and makes an effort to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. The IRS Office of Privacy was not consulted regarding the specific questions asked of applicant organizations. However, the IRS advised applicant organizations that if they believed that requested information required to demonstrate eligibility for section 501(c)(4) status could be provided through alternative information, they could contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in an alternative manner.



**Question 5. What is the total number of IRS 1313 and 2382 letters sent in 2011 and 2012 (to date) which specifically request names of donors?**

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not specifically track whether a 1313 or 2382 letter was sent or the specific questions asked in the letters. To determine the specific questions asked in each development letter sent, manual review of each file would be required. IRS staff is available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

**Question 6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?**

Letters 1313 and 2382 are template letters used in all cases seeking additional information that provide general information on the case development process. Individualized questions and requests for documents based on the facts and circumstances set forth in the particular application are prepared by the revenue agent assigned to the case and are attached to the template letter.

There are instances where donor information may be needed for the IRS to make a proper determination of an organization's exempt status, such as when the application presents possible issues of inurement or private benefit. Accordingly there may be future situations where a revenue agent needs to clarify the sources of financial support to an organization by requesting the names of donors.

Nevertheless, the IRS takes privacy very seriously, and makes efforts to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. As previously mentioned, we advised applicant organizations that if they believed that requested information required to demonstrate eligibility for section 501(c)(4) status could be provided through alternative information, they can contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in the alternative manner.

**Question 7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?**

The IRS does not believe it is necessary to review donor identifying information in all determination cases involving applications for tax-exempt status under section 501(c)(4). I am not aware of any recommendation from IRS personnel that the Form 1024 be revised to require such information be furnished in all cases.

**Question 8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as \$1, meet the relevancy standard?**

The level of development necessary to process an application to ensure the legal requirements of tax-exemption are satisfied varies depending on the facts and circumstances of each application. Revenue agents use sound reasoning based on tax law training and their experience to review applications and identify the additional information needed to make a proper determination of an organization's exempt status. As noted above in question 6, under certain facts and circumstances, such as when the application presents possible issues of inurement or private benefit, donor information may be needed for the IRS to make a proper determination of an organization's exempt status. An applicant who is concerned with burden or relevancy in the process can work with the agent assigned to the case and the agent's manager.

I hope this information is helpful. I am also writing to your colleagues. If you have questions, please contact me or have your staff contact Cathy Barre, Director, Legislative Affairs, at (202) 622-3720.

Sincerely,



Steven T. Miller  
Deputy Commissioner for  
Services and Enforcement